

1/10/12

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

THE STATE OF MONTANA,

Plaintiff,

vs.

HARRIS HIMES,

Defendant.

Cause No. DC-11-117

OMNIBUS HEARING ORDER

DISCOVERY

1. In compliance with §46-15-322, MCA, the State immediately and on a continuing basis shall make available to the Defendant for examination and reproduction the following information:
  - a. The names, addresses and statements of witnesses and names and addresses of experts, and the results of their physical examinations, scientific tests, experiments or comparisons, their written reports and statements.
  - b. All physical or documentary evidence.
  - c. All oral, written, or recorded statements made by Defendant to investigating officers or to third parties.
  - d. All investigative reports.
  - e. All exculpatory evidence known to the State.
2. In compliance with §46-15-323, MCA, Defendant immediately and on a continuing basis shall make available to State for testing, examination, or reproduction:
  - a. The names, addresses and statements of witnesses and names and addresses of experts and the results of their physical examinations, scientific tests, experiments, or comparisons, their written reports and statements.
  - b. All physical or documentary evidence.



### FITNESS TO PROCEED

3. The Defendant's fitness to proceed is at issue: ☐ Yes ☒ No

### INFORMANT AND SURVEILLANCE

4. The State declares that a confidential informant was involved: ☐ Yes ☒ No  
a) The informant will be called as a witness? ☐ Yes ☐ No  
b) The State has disclosed the Informant's identity? ☐ Yes ☐ No  
c) The State will claim the privilege of nondisclosure. ☐ Yes ☐ No
5. The State declares there has been electronic surveillance of the Defendant or his premises:  
☐ Yes ☒ No  
All material obtained by electronic surveillance has been supplied to the Defendant.  
☐ Yes ☐ No

### PERSISTENT FELONY OFFENDER

6. The State intends to seek treatment of the Defendant as a persistent felony offender pursuant to §46-13-108, MCA: ☐ Yes ☒ No

Notice shall be filed and sealed until the time of trial or until a plea of guilty or *nolo contendere*. It shall specify the alleged prior convictions and may not be made known to the jury before the verdict is returned except as allowed by the Montana Rules of Evidence. The sealed notice shall be filed and served at least 30 days before the hearing date designated in paragraph 19.

### SENTENCE ENHANCEMENT

7. The State intends to seek an enhanced sentence: ☐ Yes ☒ No  
The basis for enhancement is \_\_\_\_\_.

### STATE'S MOTIONS

8. The State has the following described pretrial motion(s): ☒ Yes ☐ No  
a. Possible Motion in Limine \_\_\_\_\_  
b. \_\_\_\_\_  
c. \_\_\_\_\_

### DEFENDANT'S MOTIONS

9. Pursuant to §46-13-302, MCA, Defendant will move to suppress physical evidence:  
RESERVE ☐ Yes ☐ No
10. Pursuant to §46-13-301, MCA, Defendant will move to suppress Defendant's admission or confession: ☐ Yes ☐ No  
N/A

11. Pursuant to §46-13-401, MCA, Defendant will move to dismiss: ☒ Yes ☐ No

These motions are:

- a. STATUTE OF LIMITATIONS TO COUNT VII  
b. SUFFICIENCY OF THE INFORMATION - SEE ATTACHED  
c. \_\_\_\_\_

#### AFFIRMATIVE DEFENSES

Defendant is aware of the time limits imposed by §46-15-323(2), MCA, in which Defendant may assert certain defenses.

12. Defendant asserts an affirmative defense: ☒ Yes \_\_\_\_\_ Alibi ☐ No  
\_\_\_\_\_ Compulsion  
\_\_\_\_\_ Double Jeopardy  
\_\_\_\_\_ Entrapment  
\_\_\_\_\_ Justifiable use of force  
\_\_\_\_\_ Mistaken identity  
☒ Other SEE ATTACHED

#### CRAWFORD ISSUES

13. Are there *Crawford* issues regarding confrontation of witnesses: ☒ Yes ☐ No

#### CLOSED PROCEEDINGS

14. The following pretrial proceedings and/or records shall not be open to the public, pursuant to §46-11-701, MCA: \_\_\_\_\_

#### WITNESSES

15. The last date to identify both fact and expert witnesses together with Rule 26(b) expert disclosures shall be APRIL 30, 2012.

#### DEADLINES AND TRIAL PROCEDURE

16. A plea agreement, if any, shall be resolved by SEPTEMBER 1, 2012. Plea agreements will not be considered after this date without demonstration of good cause and likely imposition of costs on the party responsible for delay beyond the deadline.
17. If Defendant does not respond with his/her Omnibus Hearing Order proposals within two weeks after receipt of the State's Omnibus Hearing Order proposals, the State shall request a status hearing.

18. The last date to file and serve all pretrial motions and notice of every nature, including, but not limited to, motions *in limine*, notice of affirmative defenses, notice of persistent felony offender, *Crawford* issues, etc., shall be JUNE 5, 2012. A hearing on motions shall be held on \_\_\_\_\_ at \_\_\_\_\_ m. Motions *in limine* that truly arise after the deadline shall be considered sparingly only if such motions are filed immediately after a party becomes aware of the facts giving rise to a request for relief. Such information must be contained in an affidavit supporting the request for relief. Delay in filing or serving such a motion may result in refusal to consider it. Motions filed close to trial date are strongly discouraged and shall not be considered unless justice requires.

19. The Clerk of Court will draw a panel consisting of 60 prospective jurors randomly selected by computer program(s).

a. The State waives any right to be present at the drawing: ☒ Yes [ ] No

b. Defendant waives any right to be present at the drawing: ☒ Yes [ ] No

20. Seven days before the pretrial conference, the parties shall have conferred and shall have submitted stipulated jury instructions. The parties also are encouraged to stipulate to facts and to prepare a document incorporating the stipulation which will be presented to the jury as an instruction by the Court. Each party may submit additional proposed instructions by the same date.

The proposed instructions shall be numbered at the bottom of the page or on a separate page. The authority for each proposed instruction shall be included at the bottom of the page or on a separate page following each instruction.

All instructions shall be provided to the Court on a disk or via e-mail at dkaatz@mt.gov. If more than 10 instructions are proposed, the proposed instructions shall include an index sheet which identifies the stipulated instructions. Absent the required index, proposed instructions may not be considered. The Court may not consider proposals which are not timely and in compliance with this order.

21. All exhibits shall be pre-marked and served upon the opposing party at least 2 weeks before trial.

Plaintiff shall label with numerals. Defendant shall label with letters. Failure to comply may result in sanctions including, but not limited to, refusal to admit an exhibit or all exhibits.

Objections to exhibits other than foundation shall be filed and served at least five days before trial or shall be waived.

22. Each party may file and serve a Trial Brief which shall contain 1) not more than one paragraph for each legal issue with citations to controlling law 2) a list of witnesses and 3) a list of exhibits unless the party has supplied the Court with a separate binder of exhibits.

A final pretrial conference shall be held on \_\_\_\_\_ at \_\_\_\_\_ m. At the final pretrial conference the Court and the parties will discuss the policies and procedures to be followed at trial and other pending issues.

23. Expected length of trial is 10 days.

24. [ ] Judge [XX] Jury Trial shall begin on \_\_\_\_\_ at \_\_\_\_\_ m.

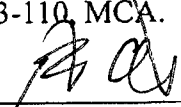
### STIPULATIONS

Counsel stipulate and agree upon the following facts and legal issues:

\_\_\_\_\_

\_\_\_\_\_

Counsel for the parties and Defendant acknowledge that each has read the omnibus hearing statute, §46-13-110, MCA, and each is prepared to discuss all pretrial issues. Counsel for the parties and Defendant have reviewed this Omnibus Order and hereby stipulate to its entry by the Court. Defendant personally, knowingly, voluntarily, and intelligently waives his right to have an omnibus hearing under §46-13-110 MCA.

  
\_\_\_\_\_  
Jesse Laslovich/Brett O'Neil  
Attorney for the State

Date: 12.12.11

\_\_\_\_\_  
Patrick F. Flaherty  
Attorney for Defendant

Date: 12.12.11

\_\_\_\_\_  
Harris Himes  
Defendant

Date: \_\_\_\_\_

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
LOREN TUCKER  
District Judge

## **DEFENDANT'S OMNIBUS ATTACHMENT**

### **WAIVER OF SPEEDY TRIAL**

The Defendant waives his right to a speedy trial because he is requesting a trial after September so he can conduct discovery and file appropriate motions.

### **CRAWFORD & CONFRONTATION ISSUES**

There is a related case, State v. Bryant, DC-11-116/3, in which a material witness and alleged accomplice is charged with these same crimes. This individual is out of the country and the business he operates, Duratherm, is in Mexico. We may need to take perpetuation depositions as part of the defense.

### **AFFIRMATIVE DEFENSES**

#### **MOTIONS TO DISMISS**

The Defendant needs to conduct some discovery before filing Motions to Dismiss and raising certain affirmative defenses. This case involves the application of and definitions of securities laws, inter alia, as applied to this Defendant.

### **OTHER ISSUES**

This Defendant may move for a change of venue due to the publicity this case has already engendered.

We are also considering motions for joinder or in the alternative exclusion of evidence due to the relationship with the case of State v. Bryant, Case No. DC-11-116/3.

Discovery is ongoing and we reserve the right to seek appropriate relief if we cannot resolve those issues by agreement.